

## Department of Justice

## § 100.11

costs) which is assigned to a cost objective.

*Cost objective* means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost of processes, products, jobs, capitalized projects, etc.

*Cost pool* means groupings of incurred costs identified with two or more cost objectives, but not identified specifically with any final cost objective.

*Direct supervision* means immediate or first-level supervision.

*Directly allocable cost* means any cost that is directly chargeable to one or more cost objectives and can be distributed to them in reasonable proportion to the benefits received.

*Directly assignable cost* means any cost that can be wholly attributed to a cost objective.

*Directly associated cost* means any directly assignable cost or directly allocable cost which is generated solely as a result of incurring another cost, and which would not have been incurred had the said cost not been incurred.

*Final cost objective* means a cost objective that has allocated to it, both assignable and allocable costs and, in the carrier's accumulation system, is one of the final accumulation points.

*Installed or deployed* means that, on a specific switching system, equipment, facilities, or services are operable and available for use by the carrier's customers.

*Labor cost* means the sum of the payroll cost, payroll taxes, and directly associated benefits.

*Network operations costs* means all directly associated costs related to the ongoing management and maintenance of a telecommunications carrier's network.

*Plant costs* means the directly associated costs related to the modifications of specific kinds of telecommunications plants, such as switches, intelligent peripherals and other network elements. These costs shall include the costs of inspecting, testing and reporting on the condition of telecommunications plant to determine the need for replacements, rearranges and changes; rearranging and changing the location of plant not retired; inspecting after

modifications have been made; the costs of modifying equipment records, such as administering trunking and circuit layout work; modifying operating procedures; property held for future telecommunications use; provisioning costs; network operations costs; and receiving training to perform plant work. Also included are the costs of direct supervision and office support of this work.

*Provisioning costs* means all costs directly associated with the resources expended within a telecommunications carrier's network to provide a connection and/or service to an end user of the telecommunications service.

*Trade secrets/proprietary information* means information which is in the possession of a carrier but not generally available to the public, which that carrier desires to protect against unrestricted disclosure or competitive use, and which is clearly identified as such at the time of its disclosure to the government.

*Unit cost* means the directly associated cost of a single unit of a good or service which is included in a cost element.

### § 100.11 Allowable costs.

(a) Costs that are eligible for reimbursement under section 109(e) CALEA are:

(1) All reasonable plant costs directly associated with the modifications performed by carriers in connection with equipment, facilities, and services installed or deployed on or before January 1, 1995, to establish the capabilities necessary to comply with section 103 of CALEA, until the equipment, facility, or service is replaced or significantly upgraded or otherwise undergoes major modifications;

(2) Additional reasonable plant costs directly associated with making the assistance capability requirements found in section 103 of CALEA reasonably achievable with respect to equipment, facilities, or services installed or deployed after January 1, 1995, in accordance with the procedures established in CALEA section 109(b); and

(3) Reasonable plant costs directly associated with modifications to any of

## § 100.12

a carrier's systems or services, as identified in the Carrier Statement required by CALEA section 104(d), that do not have the capacity to accommodate simultaneously the number of interceptions, pen registers, and trap and trace devices set forth in the Capacity Notice(s) published in accordance with CALEA section 104.

(b) Allowable plant costs shall include:

(1) The costs of installation, inspection, and testing of the telecommunications plant, and inspection after modifications have been made; and

(2) The costs of direct supervision and office support for this work for plant costs.

(c) In the case of any modification that may be used for any purpose other than lawfully authorized electronic surveillance by a government law enforcement agency, this part permits recovery of only the incremental cost of making the modification suitable for such law enforcement purposes.

(d) Reasonable costs that are directly associated with the modifications performed by a carrier as described in § 100.11(a) are recoverable. These allowable costs are limited to directly assignable and directly allocable costs incurred by the business units whose efforts are expended on the implementation of CALEA requirements.

## § 100.12 Reasonable costs.

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with the carrier or its separate divisions that may not be subject to effective competitive restraints.

(1) No presumption of reasonableness shall be attached to the incurrence of costs by a carrier.

(2) The burden of proof shall be upon the carrier to justify that such cost is reasonable under this part.

(b) Reasonableness depends upon considerations and circumstances, including, but not limited to:

(1) Whether a cost is of the type generally recognized as ordinary and necessary for the conduct of the carrier's

## 28 CFR Ch. I (7-1-08 Edition)

business or the performance of this obligation; or

(2) Whether it is a generally accepted sound business practice, arm's-length bargaining or the result of Federal or State laws and/or regulations.

(c) It is the carrier's responsibility to inform the Government of any deviation from the carrier's established practices.

## § 100.13 Directly assignable costs.

(a) A cost is directly assignable to the CALEA compliance effort if it is a plant cost incurred specifically to meet the requirements of CALEA sections 103 and 104.

(1) A cost which has been incurred for the same purpose, in like circumstances, and which has been included in any allocable cost pool to be assigned to any final cost objective other than the CALEA compliance effort, shall not be assigned to the CALEA compliance effort (or any portion thereof).

(2) Costs identified specifically with the work performed are directly assignable costs to be charged directly to the CALEA compliance effort. All costs specifically identified with other projects, business units, or cost objectives of the carrier shall not be charged to the CALEA compliance effort, directly or indirectly.

(3) The burden of proof shall be upon the carrier to justify that such cost is an assignable cost under this part.

(b) For reasons of practicality, any directly assignable cost may be treated as a directly allocable cost if the accounting treatment is consistently applied within the carrier's accounting system and the application produces substantially the same results as treating the cost as a directly assignable cost.

## § 100.14 Directly allocable costs.

(a) A cost is directly allocable to the CALEA compliance effort:

(1) If it is a plant cost incurred specifically to meet the requirements of CALEA sections 103 and 104; or

(2) If it benefits both the CALEA compliance effort and other work, and can be distributed to them in reasonable proportion to the benefits received.